" .....an applicant for a licence shall be deemed to be competent to drive a motor vehicle of any class or description.....if he is tested on a vehicle of any class or description.....and satisfies the person conducting the test that he —

(a) xxxxxxx

(b) xxxxxxx

(c) is competent to drive, without danger to and with due consideration for other users of the road, a vehicle of the same class or description as that on which he is tested.

Rule 6(4) contains a table showing in Column 1 the groups into which for the purposes of the rules motor vehicles are divided. A motor cycle is included in the group.

Rule 7 provides for tests to be conducted by a class of examiners to be appointed by the Commissioner of Road Transport.

Rule 10 reads as follows:—

(1) Any person passing the test shall be furnished with a certificate in form Number DL.18 of the First Schedule to these Rules, and any person failing to pass such test shall be furnished with a statement as in form Number DL.19 of such Schedule.

(2) If a certificate or statement so furnished by a Registrar is lost or destroyed, the person to whom it was furnished may obtain a duplicate copy from the Registrar who furnished the same on payment of the fee prescribed in item 5 or 6 of the Second Schedule hereto.

(3) An applicant for a licence, who is required to satisfy the Registrar that he has passed the test, shall deliver the certificate for retention by the Registrar. The Registrar shall if so required by the applicant issue to him a copy of the certificate on payment of the fee prescribed in item 5 of the Second Schedule hereto.

In my opinion Rule 10(1), read with Rule 6(3), imposes an obligation on the tester to give or sign a certificate as he is the person who has conducted the test and has to be satisfied as to the competence of the applicant. The role of the Registrar is, in my view, only that of the custodian of the certificate and this view appears to be borne out by Rule 10(2) and (3).

I therefore hold that the certificate of competence to drive P3 is a certificate required by law to be given or signed. There is evidence that the first appellant signed it and that it was false in a material particular, and that the second and third appellants aided and abetted the commission of the offence. The appeal of each of the appellants in respect of the first charge against him is dismissed and his conviction is upheld. As to the sentence on each of them, although I am of opinion that it is on the light side, I do not wish to interfere with it.

Appeal dismissed; Conviction upheld.

Solicitors: *Joseph & Son; Kam Woon Wah & Co.*

MUNIANDI v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) January 24, 1963]

[K.L. — F.M. Criminal Appeal No. 46 of 1962]

Criminal Law — Voluntarily causing grievous hurt — Framing of charge — Whether charge should specify that instrument used as weapon of offence was likely to cause death — Explanation of Penal Code, s.326.

The appellant was convicted for causing grievous hurt with a knife in contravention of section 326 of the Penal Code and sentenced to 2 years' imprisonment. On appeal it was argued *inter alia* that the charge was bad because it did not include an allegation that the instrument used was one which when used as a weapon of offence was likely to cause death as in *Shaik Meera* v. *The Queen* (1) and *Sultan Mohamed* v. *The Queen* (2).

Held: as the knife used in this case fell within the first three descriptions, i.e. for shooting, stabbing or cutting it was not necessary to specify in the charge that the instrument used was one which when used as a weapon of offence was likely to cause death. *Shaik Meera* v. *The Queen* and *Sultan Mohamed* v. *The Queen* distinguished.

Per Curiam: "In our view the meaning of that (i.e. section 326 of the Penal Code) is crystal clear. There is an offence if the instrument used is one for shooting; there is an offence if the instrument used is one for stabbing; there is an offence if the instrument used is one for cutting; and finally there is an offence if the instrument used which does not come within either of the first three descriptions, that is for shooting, stabbing or cutting, is one which if used as a weapon of offence is likely to cause death. In other words the words 'likely to cause death' qualify the word 'instrument' the second time it occurs and not the first time.

Cases referred to:—

(1) *Shaik Meera* v. *The Queen* [1955] M.L.J. 159.

(2) *Sultan Mohamed* v. *The Queen* [1952] M.L.J. 186.

COURT OF APPEAL (CRIMINAL).

D. A. Devadson for the appellant.

H. S. Ong (Deputy Public Prosecutor) for respondent.

Thomson C.J. (delivering oral judgment): This appellant was convicted at Muar for causing grievous hurt in contravention of section 326 of the Penal Code. He was sentenced to 2 years' imprisonment. Against that conviction and sentence he has now appealed.

In our view the appeal is without merit.

There is no doubt as to what happened on the morning in question. The appellant, who was employed as a mandor on a large rubber estate near Johore, became involved in an altercation with the conductor of the estate. Apparently the dispute arose over the appellant's wife being given less remunerative work than she had thitherto. As so often happens on these occasions one word leads to more words and more words lead to blows, the first blow being struck by the appellant. The whole affair can only be described by the Anglo-Indian colloquialism of "bobbery". Up to a point no great harm was done to anybody but at some stage of the proceedings the appellant produced what in our view is an extremely dangerous looking knife and inserted it into the

person of the complainant who was a fellow mandor and causing his injury which falls within the statutory definition of "grievous hurt". There is not a scrap of evidence that anybody except the appellant made or attempted to make use of a knife at any time. In the event the appellant was overpowered and arrested.

In the circumstances it is very difficult to see how the appellant could possibly have hoped to be acquitted.

As regards the sentence, in our view it is a modest one. Our many years of experience in these Courts tell us that again and again this very sort of situation — the use of this very sort of weapon — ends with a dead body. In our view in all cases in which a knife is used a punishment should be imposed which is sufficiently heavy to emphasize the seriousness of the offence.

One of the grounds of appeal calls for a little less cursory consideration because it arises from a misunderstanding of the provisions of the Code and of two reported cases which may be widespread.

The charge in the present case reads as follows:—

"That you on the 8th day of March, 1962, at about 5.45 a.m. at Sungei Senarut Estate, Batu Anam, Segamat, in the State of Johore, voluntarily caused grievous hurt to one Rengasamy, son of Letchumanan by means of an instrument for cutting, to wit, a knife, and that you thereby committed an offence punishable under section 326 of the Penal Code."

It was argued that that charge was bad because it should have included an allegation that the instrument used was one which used as a weapon of offence was likely to cause death. In support of that our attention was invited to the local case of *Shaik Meera* v. *The Queen* [1] and the Singapore case of *Sultan Mohamed* v. *The Queen* [2].

The relevant portion of section 326 of the Code reads as follows:—

"Whoever ..... voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, ... shall be punished ....."

In our view the meaning of that is crystal clear. There is an offence if the instrument used is one for shooting; there is an offence if the instrument used is one for stabbing; there is an offence if the instrument used is one for cutting; and finally, there is an offence if the instrument used which does not come within either of the first three descriptions, that is for shooting, stabbing or cutting, is one which if used as a weapon of offence is likely to cause death. In other words the words "likely to cause death" qualify the word "instrument" the second time it occurs and not the first time.

The present case is to be distinguished from the two cases relied on by the appellant because in each of them the instruments used were pieces of wood. Pieces of wood are not instruments for shooting, stabbing or cutting and therefore to make out an offence under section 326, or under section 324 in which the relevant words are the same, it had to be alleged and proved that these pieces of wood were instruments which if used as weapons of offence were likely to cause death.

The appeal is dismissed.

Appeal dismissed.

D'CRUZ v. SEAFIELD AMALGAMATED RUBBER CO. LTD.

[O.C.J. (Gill J.) February 11, 1963]

[K.L. — Civil Suit No. 486 of 1961]

Master and Servant — Contract of service — Notice of termination of service — Wrongful dismissal — Claim for damages, commission and leave pay.

The plaintiff was a chief clerk of three rubber estates in 1953 and was paid by all three estates proportionately. In 1956 his services with one of these estates was terminated and he was given 3 months' pay in lieu of notice. Soon afterwards he was appointed conductor in charge of one of the two remaining estates, which two estates were wholly owned and came under the administration of the defendants. On March 3, 1961 the plaintiff received a letter informing him that his services would not be required one month from the date of the letter. The plaintiff's salary and allowances were paid up to April 2, 1961. The plaintiff now claimed that he was wrongfully dismissed and claimed sums of money due to him and damages for wrongful dismissal. The questions for the determination of the Court were whether (a) the plaintiff was entitled to commission from October 1, 1960 to April 4, 1961; (b) he was entitled to 3 weeks' or 2 weeks' leave pay and (c) he was entitled to 3 months' notice of termination of his services and if so, the damages he was entitled to.

Held: (1) the plaintiff was entitled to recover by way of commission on the basis of the commission paid to him for the previous financial year and on the basis that the profits during the current year were not smaller than those in the previous year;

(2) the plaintiff was entitled to 3 weeks' leave pay;

(3) having regard to the facts and all the circumstances of this case the plaintiff was entitled to 3 months' notice.

Cases referred to:—

(1) *Payzu* v. *Hannaford* (1918) 2 K.B. 348.

(2) *Foxall* v. *International Land Credit Co.* (1867) 16 L.T. 637.

(3) *St. L.B. Aldworth* v. *A.H. Frankton* (1915) 1 F.M.S.L.R. 233.

(4) *Fairman* v. *Oakford* (1880) 5 H. & N. 635.

(5) *High Street Provision Store Ltd.* v. *Oliverio* [1930] S.S.L.R. 210.

(6) *MacDowall's case* (1886) 32 Ch. D. at p. 371.

(7) *Mulholland* v. *Bexwell Estates Co. Ltd. and Ors.* (1950) 66 T.L.R. (Pt. 2) 764.

(8) *Addis* v. *Gramophone Company Limited* [1909] A.C. 488.

(9) *S.R. Fox* v. *Ek Liong Hin Ltd.* [1957] M.L.J. 1.